

1 HIGHLY CONFIDENTIAL - JOHN VARLEY

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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

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5 In Re:

Chapter 11

6  
7 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC. et al., (Jointly Administered)

8  
9 Debtors.  
10 - - - - -

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12 DEPOSITION OF JOHN VARLEY

13 Thursday, September 3, 2009

14 At: 12:00 pm

15 Taken at:

16 Barclays

1 Churchhill Place

17 London

United Kingdom

18  
19 Reported by: AILSA WILLIAMS

Certified LiveNote Reporter  
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22  
23  
24  
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16 Also Present:

17 PHILIP E. KRUSE: Alvarez & Marsal

18 GREG BARDEN: Jones Day

19 DEBORAH COOPER: Barclays

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2       potential avenues, of which Lehman was one.

3                   This was, as I say, a high level  
4       strategic review, where the premise was: If it  
5       should become possible to do a transaction with  
6       Lehmans, do you, the board feel, as I the Chief  
7       Executive feel, that this would be a good way of  
8       implementing the strategy?

9           Q.     And at that June 2008 discussion were  
10      any materials submitted to the board analyzing  
11      Lehman's business and the nature of that  
12      opportunity?

13          A.     You may well need to refresh my memory  
14      on that point. I presume that there were some  
15      board materials tabled at that time but I don't  
16      have a clear recollection of what they were, but  
17      as an example we might have tabled for the board:  
18      This is what the Lehman's business looks like.  
19      Here is public disclosure relating to Lehman's.  
20      This is where its people are. This is where its  
21      earnings are derived from, and so on.

22          Q.     I can't refresh your recollection on  
23      that. I don't think we have any materials from  
24      that time period. The reason I ask the question  
25      is that type of discussion with the board, where

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it got to that level of specifics, Lehman was discussed, that would have been done with the benefit of at least some written materials?

A. I should not indulge in idle speculation and I have a fallible memory.

Q. You have been well trained for the deposition. Go ahead.

A. So, if I then go to in a sense the more proximate to the transaction part of your question --

Q. So we left June behind?

A. We left June behind, and I do not recall precisely whether between June and the middle of September there was any -- there was certainly no lengthy discussion of the Lehman opportunity at the one board meeting that took place between June and mid-September, but certainly it is possible I think that we may have said that the Lehman situation appeared to be deteriorating. Then, and again I don't have precise recall, there were various board discussions in the run up to a telephone meeting of the board that we had on the Sunday.

Q. The Sunday before the bankruptcy filing?

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A. Yes, so I think I am talking about Sunday 14 September, I believe, and I think there may also have been a further telephone meeting of the board on the Tuesday or the Wednesday, probably the Tuesday, given that we made, as you know, an announcement on the Wednesday.

Q. Let's take those two events in turn. The Sunday board meeting, by Sunday 14 September you already had a due diligence team that was doing a fairly deep dive into Lehman's books. Correct?

A. We did.

Q. And you had made some initial I guess conclusions about assets that you found attractive and assets that you did not want to purchase at all. Is that fair?

A. Well, we had concluded some initial due diligence and had a point of view. If I can just back up for one moment, it will be a convenience, if you are prepared to allow it, for me to refer to the transaction that we were looking at on the Saturday and the Sunday as Lehman one.

Q. That would be helpful.

A. The transaction that we announced on

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Wednesday as Lehman two and the transaction that we implemented as Lehman three.

Q. That is very helpful.

A. If that helps.

Q. No, that is very helpful.

A. The due diligence that we were doing at the back end of the week before the bankruptcy filing, that due diligence was aimed at Lehman one. We had identified a number of areas where we felt that the valuations applied by Lehman's to their balance sheet were optimistic. Now, you will conclude whether that coincides with your description, but that would be my description.

Q. Let's drill down a little bit more, because my understanding is not only you had identified these assets where you found Lehman's valuations to be optimistic, maybe overly so, but you had then taken the next step of listing them as excluded assets in any contemplated transaction?

A. Um hum.

Q. Is that fair?

A. What we did, and here I am recalling a set of conversations that we had with the US

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administrations in its various guises, we indicated that we would not be able to, we would not be prepared to proceed with Lehman one if certain assets came with the Lehman one transaction.

Q. Just to be clear on the record, you are talking about discussions you had with the US Government, about the role the US Government might play, if any, in the Lehman one transaction?

A. Yes.

Q. And you were discussing a backstop or some kind of a Government facility that would in effect cover the risk of loss on those assets that you would exclude from your transaction?

A. As I recall it, we were looking at two particular areas. One was a set of assets that we didn't want to acquire, and two was the guaranteeing for the period between announcement and closing, which could have been a period of several months, the guaranteeing of the trading liabilities of Lehman's through that period.

In a sense we were indifferent to how those particular steps were procured, whether by the US Government as principal or whether by the US Government as agent with

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2 other principals, but we were clear going into the Lehman  
3 one transaction that the Lehman one transaction, if it would  
4 be executed by Barclays, would have to have those features.

5 Q. And the period of time that you  
6 described between signing up the agreement and the  
7 closing of the transaction, was that a function of  
8 the approvals that you needed to obtain from your  
9 shareholders?

10 A. Partly, but partly regulatory approvals  
11 and partly the sheer complexity of a transaction  
12 of that size. I mean, my recollection is that the  
13 Lehman's balance sheet was, you know, two-thirds  
14 of a trillion dollars. There was a lot of  
15 complexity in it. Any transaction involving such  
16 an acquisition takes time to close, as you know.

17 Q. I just want to drill down this  
18 two-thirds of a trillion dollars number, just  
19 because there is a lot of zeros that end up flying  
20 around here. That is what, \$600 billion?

21 A. My recollection is that the Lehman  
22 balance sheet on the Friday night before Lehman  
23 went into administration, the gross balance sheet  
24 was about \$670 billion.

25 Q. And the Lehman one transaction that you



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the need to have a substantial discount.

Q. Do you recall a discussion on Friday, the 19th, where some of the folks that report to you reported to you that maybe there was not enough cushion or delta because of the assets that in fact had been transferred over, and therefore there was a need to obtain additional assets? Do you recall any discussion like that?

A. I don't, no.

Q. Do you know whether Barclays acquired any assets other than the assets that were transferred from the Fed repo to Barclays?

A. I don't know whether we did or whether we didn't. I would be surprised if we did.

(Exhibit 338A marked for identification)

Q. This is number 338A. I have placed before you a document marked 338A. It is a real short e-mail. If you can just let me know when you are done reviewing it, we can talk about it briefly.

A. Thank you, yes.

Q. This is an e-mail to you from Jeff Rosen at Lazard. Do you see that?

A. Yes.

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Q. Is Jeff Rosen someone you had been communicating with over the weekend in connection with the Lehman one transaction?

A. My recollection is imperfect. We have a number of advisers. Lazards, of whom Jeffrey is a senior director, often advised us on transactions. Actually, my recollection is that we did not engage them or seek their advice on this transaction, but as you will know that doesn't always prevent investment bankers trying to advise you on a transaction.

Q. So there is no mystery, Lazards was an adviser to Lehman in the transaction.

A. Um hum.

Q. Does that help your recollection?

A. It would certainly confirm that we didn't retain them ourselves.

Q. That is why I am just trying to figure out why Mr. Rosen is contacting you and Mr. Diamond directly on the morning that Lehman filed for bankruptcy.

A. Because he is the relationship lead under Bruce Wasserstein at Lazard, and in the ordinary course of any three-month period he would

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quite often ring me to talk about what is going on in the market, and this was such a call.

Q. Okay. Do you recall having a discussion with Mr. Rosen following this e-mail?

A. Do you know, I don't think I did have a conversation with him actually.

Q. Do you remember having a conversation with anyone else from Lazards in connection with the Lehman transaction?

A. I don't.

(Exhibit 339A marked for identification)

Q. Sir, I have placed before you a one page document marked Exhibit 339A. Take a moment to look at it, let me know when you are done.

A. Thank you.

Q. Do you recognize this as an e-mail that you sent to I guess the senior leaders at the bank announcing the Lehman two transaction?

A. I recognize it as a communication that I sent to the senior leaders of the group. It was not announcing a Lehman's two transaction. It was indicating the possibility of a Lehman's two transaction.

Q. In the second paragraph of your

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2 announcement you make a reference to the  
3 "opportunity to purchase what we regard as the  
4 good parts of the investment bank (including  
5 people, infrastructure and licenses) without  
6 having to take on any exposure to the bad parts".

7 Do you see that?

8 A. I do see that, yes.

9 Q. Was that basically the formula you  
10 followed in coming up with the Lehman two  
11 transaction?

12 A. Although I didn't do it explicitly  
13 there, what I was seeking to do, remember that  
14 they had been hearing in the media about the  
15 Lehman one transaction, was to juxtapose Lehman  
16 one and Lehman two, in other words this was  
17 a transaction which was smaller, where we could be  
18 more selective. That was the point that I was  
19 seeking to make by that remark.

20 MR. SHAW: Is this a logical time for  
21 five minutes?

22 MR. TAMBE: Yes, we can break now.

23 (A short break).

24 (Exhibit 340A marked for identification).

25 Q. I have handed you a 2-page document

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marked Exhibit 340A. Take a moment to review it,  
let me know when you are done.

A. Thank you.

Q. This is an e-mail to you from Mark  
Merson. Do you see that?

A. Yes, it is, yes.

Q. This was in preparation for the call  
that you had with analysts on 17 September,  
correct?

A. Correct.

Q. This collection of bullet points, are  
these issues that you had discussed with  
Mr. Merson to develop this list of talking points?

A. No, I had not.

Q. So this is something that he would have  
prepared for your review?

A. Yes.

Q. He says in the introduction to his  
e-mail: "John, as we agreed..."

A. Um hum.

Q. Had you had a discussion with Mr. Merson  
about the points he was going to address in this  
draft?

MR. SHAW: Asked and answered.